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Nos. 321, 322

In the Supreme Court of the United States

OCTOBER TERM, 1942

THE CREEK NATION, PETITIONER

v.

THE UNITED STATES

THE SEMINOLE NATION, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR WRITS OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Claims (Creek R. 12–21) is not yet reported.

JURISDICTION

The judgments of the Court of Claims were entered on June 1, 1942 (Creek R. 21; Seminole R. 12). The petition for writs of certiorari was

filed August 21, 1942. Jurisdiction of this Court is invoked under section 3 (b) of the Act of February 13, 1925, 43 Stat. 939, as amended by the Act of May 22, 1939, 53 Stat. 752 (U. S. C., title 28, sec. 288 (b)).

QUESTION PRESENTED

Whether the Creek and Seminole Nations may recover money damages from the United States for its failure and refusal to oust certain railroads from lands which they appropriated from these tribes for right-of-way and station purposes, but which the railroads have not fully paid for and have not devoted exclusively to railroad uses.

STATUTES INVOLVED

Articles 1 and 5 of the treaty of March 21, 1866, 14 Stat. 755, between the Seminole Nation and the United States; Articles 1 and 5 of the treaty of June 14, 1866, 14 Stat. 785, between the Creek Nation and the United States; sections 13, 14, 15, and 16 of the Act of February 28, 1902, 32 Stat. 43; sections 11 and 18 of the Act of April 26, 1906, 34 Stat. 137; section 1 of the Seminole jurisdictional Act of May 20, 1924, 43 Stat. 133; and section 1 of the Creek jurisdictional Act of May 24, 1924, 43 Stat. 139, are set forth in the Appendix, *infra*, pages 13–24.

STATEMENT

The Seminole Nation, by Article V of the treaty of March 21, 1866, 14 Stat. 755, 757, granted "a right of way through their lands to any company

which shall be duly authorized by Congress . . . to construct a railroad from any point on their eastern to their western . . . boundary". And the tribe further agreed "to sell to . . . any company duly authorized as aforesaid, such [unoccupied] lands . . . lying along the line of said contemplated railroad, not exceeding on each side thereof a belt or strip of land three miles in width, at such price per acre as may be eventually agreed upon between said Seminole nation and the party or parties building said road". The Creek Nation made a similar agreement with the United States in the treaty of June 14, 1866, 14 Stat. 785, 787.

These treaties were subsequently implemented by special acts passed in July 1866 authorizing two designated companies to construct railroads across Creek and Seminole lands (Act of July 26, 1866, 14 Stat. 289; Act of July 27, 1866, 14 Stat. 292), and finally by a general statute extending a like privilege to all duly organized railroad companies (Act of February 28, 1902, 32 Stat. 43, 47–51). The 1902 act, beside providing for rights of way, permitted the railroads to acquire additional adjacent lands for station grounds and depots (not exceeding 200 feet in width and 2,000 feet in length) and for roundhouses, turntables, etc. (not exceeding 40 acres each). Before railroads could be constructed, full compensation for the right of way and other lands was to be made to the individual or tribal owner thereof (section 15). Each railroad

company was also required to pay, for the benefit of the particular tribe through whose land the railroad was constructed, an annual charge of fifteen dollars for each mile of road (section 16).

There have been constructed, pursuant to the foregoing treaties and statutes, a number of railroads across lands which were originally owned by the Creek and Seminole Nations but which have since been largely allotted in severalty.

In 1926 and 1930 the Creek and Seminole Nations filed suits in the Court of Claims (Creek R. 1; Seminole R. 1) to recover from the United States damages for an alleged misappropriation of land by the railroads, and for the alleged failure of the railroads to pay to the tribes the compensation prescribed by the statute of 1902. The petitions further alleged that the United States, as guardian or trustee of the Creek and Seminole Nations, had assumed complete control of the affairs of these tribes, and that the United States had failed and refused to recover the land and the compensation for the tribes.

The United States demurred to the petitions on the ground that the alleged cause of action did not arise under or grow out of a treaty or act of Congress, and that the court was therefore without jurisdiction to consider the claims (Creek R. 1, 13; Seminole R. 1). Act of May 20, 1924, 43 Stat. 133; Act of May 24, 1924, 43 Stat. 1639. These demurrers were ultimately sustained and the peti-

tions dismissed on the authority of *Choctaw and Chickasaw Nations* v. *United States*, 75 C. Cls. 494, a case involving similar claims by those tribes (Creek R. 1, 13; Seminole R. 1).

In 1933, with leave of court, the Creek and Seminole Nations filed amended petitions (Creek R. 2; Seminole R. 1). This time they alleged, as their first cause of action, that it was the duty of the United States to supervise the railroad right-of-way grants contained in the treaties of 1866 and to protect the tribes in the quiet possession of their national domains; that two companies which were granted right of way across the Creek and Seminole lands by the treaties and special acts of 1866 had also appropriated additional strips of land containing approximately twenty acres each for station grounds; that these additional strips of land were not needed and were not used for railroad purposes, and constituted an unauthorized intrusion by the railroads on lands owned by the tribes; and that the United States is liable to the tribes for damages resulting from the Government's failure to prevent these intrusions (Creek R. 2–5, Seminole R. 2–4).

For their second cause of action the petitioners alleged that it was the duty of the United States to supervise the acquisition of railroad rights of way under the Act of February 28, 1902; that certain other companies had acquired rights of way under the 1902 act; that the United States, in dis-

regard of the provisions of that act and of the Government's covenants of quiet possession contained in the treaties of 1866, had permitted these companies to stake out additional 20-acre strips of land as station reservations; that these additional strips of land were not needed for railroad purposes and constituted an unauthorized intrusion by the railroads on lands owned by the tribes; and that the United States is liable to the tribes for damages resulting from its failure to perform properly its obligations under the treaties of 1866 and the act of 1902 (Creek R. 5–7; Seminole R. 5–6).

For their third cause of action petitioners alleged that it was the duty of the United States to supervise the acquisition of rights of way under the Act of February 28, 1902; that certain companies had acquired rights of way under the 1902 act; that the railroads had failed to compensate the tribe for these rights of way and to pay the annual charges, as required by sections 15 and 16 of the act of 1902; and that the United States is liable to the tribes for its failure to compel the railroads to comply with that act (Creek R. 7–9; Seminole R. 6–8).

For their fourth cause of action petitioners repeated the allegations of their first and second causes, and then averred that it was the duty of the United States, under section 11 of the Act of April 26, 1906, to collect all revenues of whatever character accruing to the Creek and Seminole Na-

tions, and that for its failure to collect from the railroads moneys due the tribes the Government became liable for those amounts (Creek R. 9; Seminole R. 8).

And for their fifth and final cause of action petitioners repleaded the wrongs allegedly perpetrated by the railroads upon the tribes, and then averred that it was the duty of the United States, under section 18 of the Act of April 26, 1906, to bring suits to recover moneys due the tribes, and that for its failure to bring such suits the United States became liable for the value of the lands of which the petitioners have been deprived (Creek R. 10–11; Seminole R. 9–10).

To these amended petitions the United States again demurred, on the ground (1) that they failed to state facts sufficient to constitute a cause of action against the Unted States; and (2) that the court was without jurisdiction, because the alleged causes of action were predicated upon the common-law liability pertaining to the relationship of guardian and ward, and was not one "arising under or growing out" of a treaty, agreement, or act of Congress, as required by the special jurisdictional acts of 1924 (Creek R. 12; Seminole R. 11). The court below sustained the demurrers on both grounds (Creek R. 12–21; Seminole R. 11), and accordingly dismissed the petitions (Creek R. 21; Seminole R. 12). The Creek and Seminole Nations now seek certiorari.

ARGUMENT

1. The Creek and Seminole Nations do not object to the width of the rights-of-way which the various railroad companies acquired under the treaties of 1866 and the act of 1902 (Creek R. 11; Seminole R. 10).[1] In view of the fact that both the Creek and Seminole Nations agreed in the treaties of 1866 to sell to the railroads a strip of land up to three miles in width on each side of the right of way, petitioners cannot complain of the quantity of land acquired by the railroad companies. The Nations complain, instead, of the fact that the railroads, under the pretext of acquiring additional tracts for station grounds, staked off strips of land, each containing approximately twenty acres, and have not fully paid for this land and have since used it for non-railroad purposes (Pet. 14–15). Even if these allegations are admitted to be true, as the demurrer does admit them, it does not follow that the petition states a cause of action against the United States.

Under the treaties and statutes in question the lands were to be paid for by the railroads. The United States, neither expressly nor impliedly, assumed any obligations of a guarantor. The Government, in the exercise of its plenary power over

[1] Two hundred feet was the usual width allowed for railroad rights of way in statutes enacted during the era of railroad expansion. These acts likewise invariably permitted the railroads to acquire additional lands for station grounds, roundhouses, etc. See, *e. g.*, Act of March 3, 1875, 18 Stat. 482.

Indian affairs, enacted legislation implementing the treaties of 1866 and prescribing a method by which railroads could acquire from the tribes the necessary rights of way and station grounds. The exercise by Congress of its power to legislate with respect to Indian affairs "does not necessarily involve the assumption of contractual obligations by the government. Their assumption is not to be presumed in the absence of any action taken by the government or on its behalf indicating such a purpose." *United States* v. *Algoma Lumber Co.*, 305 U.S. 415, 421. As indicating an assumption of contractual liability, petitioners refer to Article I of the treaties of 1866 in which the United States guaranteed the tribes "quiet possession of their country" (Pet. 13–19); to section 11 of the Act of April 26, 1906, directing that revenues due these tribes "be collected by an officer appointed by the Secretary of the Interior" (Pet. 21–22); and to section 18 of the same act authorizing the Secretary to bring suits to collect moneys due the tribes (Pet. 21–24).

Since the Creek and Seminole Nations agreed in the treaties of 1866 to allow railroads to be constructed across their domains, it seems patent that acquisition of lands by the railroads in connection with the treaty purposes cannot be deemed a breach of the covenant guaranteeing the Indians "quiet possession" of their domain. In any event the Government is not made liable in the courts,

by a mere covenant of quiet possession, to respond in damages for injuries resulting from trespasses by third parties. *Nez Perce Tribe* v. *United States*, 95 C. Cls. 1, certiorari denied, May 25, 1942. *United States* v. *Creek Nation*, 295 U. S. 103, 109, relied on by petitioners (Pet. 17), merely holds that the United States is liable for its own intrusions and takings, not for those of others.

Section 11 of the 1906 act providing that revenues due the Five Tribes should be collected by a government agent rather than by the tribal treasurers, passed at a time when the dissolution of the tribal governments was believed to be imminent, constitutes only an intragovernmental direction to officers of the United States. Cf. *The Sac and Fox Indians*, 220 U. S. 481. Congress did not intend by that act to make the Government liable in the courts for all moneys which its officers failed in the discharge of their duties to collect. See *Robertson* v. *Sichel*, 127 U. S. 507, 515.

Similarly, section 18 of the 1906 act merely "authorizes" the Secretary of the Interior to bring suits on behalf of the Indians. It contains no undertaking by the United States to respond in damages in the event that such suits are not brought. Cf. *Pine Hill Co.* v. *United States*, 259 U. S. 191, 196. Contrary to assertions made by the petitioners (Creek R. 11; Seminole R. 10; Pet. 10), they are not precluded by their wardship status

from bringing suits on their own behalf. *Cherokee Nation* v. *Hitchcock*, 187 U. S. 294, 295. Section 18 of the 1906 act specifically recognized the capacity of these tribes to sue, both before and after the passage of the act.[2] And sections 15 and 16 of the 1902 act prescribed in detail the procedure by which the tribes could obtain from the railroads full compensation for lands taken for right-of-way and other uses.

Since the allegations of the petitions do not disclose any breach by the United States of a treaty, statutory, or contractual obligation, the court below rightly held that the petitions do not state a cause of action against the United States.

2. Even if the amended petitions be construed as showing a breach by the Government of the common-law duty of a guardian towards its wards, the dismissal by the Court of Claims was proper, because the special jurisdictional acts of 1924 under which these suits were brought limit the jurisdiction of the Court of Claims to controversies "arising under or growing out" of a treaty, agreement, or act of Congress. And the 1924 acts have been construed not to confer on the Court of Claims jurisdiction of causes of action "predicated upon the common law liabilities pertaining to the rela-

[2] "Where suit is *now pending, or may hereafter be filed* in any United States court in the Indian Territory, *by* or on behalf *of any one or more of the Five Civilized Tribes* * * *" [Italics supplied.] 34 Stat. 137, 144.

tionship of guardian and ward." *Choctaw and Chickasaw Nations* v. *United States*, 75 C. Cls. 494, 498. Such questions are political and not judicially cognizable. *Seminole Nation* v. *United States*, No. 348, October Term, 1941, decided May 11, 1942, relied on by petitioners (Pet. 18), holds that the Government in discharge of its affirmative treaty and statutory obligations (*e. g.*, the stipulated payment of money by the United States to an Indian tribe) may incur the responsibility of a fiduciary if it knowingly makes payments to corrupt Indian officials. The present case differs obviously since the United States did not have affirmative obligations to petitioners in respect of the railroad lands.

CONCLUSION

The decision of the Court of Claims is in accord with the applicable decisions of this Court, raising no new question of substance and presenting no conflict. It is therefore respectfully submitted that the petition should be denied.

CHARLES FAHY,
Solicitor General.
NORMAN M. LITTELL,
Assistant Attorney General.
VERNON L. WILKINSON,
Attorney.

SEPTEMBER 1942.

APPENDIX

Articles I and V of the treaty of March 21, 1866, 14 Stat. 755, 757–758, between the Seminole Nation and the United States provide:

> ARTICLE I. There shall be perpetual peace between the United States and the Seminole nation, and the Seminoles agree to be and remain firm allies of the United States, and always faithfully aid the government thereof to suppress insurrection and put down its enemies.
>
> The Seminoles also agree to remain at peace with all other Indian tribes, and with themselves. In return for these pledges of peace and friendship, the United States guarantee them quiet possession of their country, and protection against hostilities on the part of other tribes; and in the event of such hostilities, that the tribe commencing and prosecuting the same shall make just reparation therefor. Therefore the Seminoles agree to a military occupation of their country at the option and expense of the United States.
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> * * * * * * *
>
> ARTICLE V. The Seminole nation hereby grant a right of way through their lands to any company which shall be duly authorized by Congress, and shall, with the express consent and approbation of the Secretary of the Interior, undertake to construct a railroad from any point on their eastern to their western or southern boundary; but said railroad company, together with all its agents

and employes, shall be subject to the laws of the United States relating to the intercourse with Indian tribes, and also to such rules and regulations as may be prescribed by the Secretary of the Interior, for that purpose. And the Seminoles agree to sell to the United States, or any company duly authorized as aforesaid, such lands no legally owned or occupied by a member or members of the Seminole nation lying along the line of said contemplated railroad, not exceeding on each side thereof a belt or strip of land three miles in width, at such price per acre as may be eventually agreed upon between said Seminole nation and the party or parties building said road—subject to the approval of the President of the United States: *Provided, however,* That said land thus sold shall not be reconveyed, leased, or rented to, or be occupied by, any one not a citizen of the Seminole nation, according to its laws and recognized usages: *Provided, also,* That officers, servants, and employes of said railroad necessary to its construction and management shall not be excluded from such necessary occupancy, they being subject to the provisions of the Indian intercourse laws, and such rules and regulations as may be established by the Secretary of the Interior; nor shall any conveyance of said lands be made to the party building and managing said road, until its completion as a first-class railroad and its acceptance as such by the Secretary of the Interior.

Articles I and V of the treaty of June 14, 1866, 14 Stat. 785, 786, 787–788, between the Creek Nation and the United States, provide:

ARTICLE I. There shall be perpetual peace and friendship between the parties to this

treaty, and the Creeks bind themselves to remain firm allies and friends of the United States, and never to take up arms against the United States, but always faithfully to aid in putting down its enemies. They also agree to remain at peace with all other Indian tribes; and, in return, the United States guarantees them quiet possession of their country, and protection against hostilities on the part of other tribes. In the event of hostilities, the United States agree that the tribe commencing and prosecuting the same, shall, as far as may be practicable, make just reparation therefor. To insure this protection, the Creeks agree to a military occupation of their country, at any time, by the United States, and the United States agree to station and continue in said country from time to time, at its own expense, such force as may be necessary for that purpose. * * *

* * * * * *

ARTICLE V. The Creek nation hereby grant a right of way through their lands, to the Choctaw and Chickasaw country, to any company which shall be duly authorized by Congress, and shall, with the express consent and approbation of the Secretary of the Interior, undertake to construct a railroad from any point north of to any point in or south of the Creek country, and likewise from any point on their eastern to their western or southern boundary, but said railroad company, together with all its agents and employees, shall be subject to the laws of the United States relating to intercourse with Indian tribes, and also to such rules and regulations as may be prescribed by the Secretary of the Interior for that purpose, and the Creeks agree to sell to the United

States, or any company duly authorized as aforesaid, such lands not legally owned or occupied by a member or members of the Creek nation, lying along the line of said contemplated railroad, not exceeding on each side thereof a belt or strip of land three miles in width, at such price per acre as may be eventually agreed upon between said Creek nation and the party or parties building said road, subject to the approval of the President of the United States: *Provided, however,* That said land thus sold shall not be reconveyed, leased, or rented to, or be occupied by any one not a citizen of the Creek nation, according to its laws and recognized usages: *Provided, also,* That officers, servants, and employes of said railroad necessary to its construction and management, shall not be excluded from such necessary occupancy, they being subject to the provisions of the Indian intercourse law and such rules and regulations as may be established by the Secretary of the Interior, nor shall any conveyance of any of said lands be made to the party building and managing said road until its completion as a first-class railroad, and its acceptance as such by the Secretary of the Interior.'

Sections 13, 14, 15 and 16 of the Act of February 28, 1902, 32 Stat. 43, 47–49, provide:

SEC. 13. That the right to locate, construct, own, equip, operate, use, and maintain a railway and telegraph and telephone line or lines into, in, or through the Indian Territory, together with the right to take and condemn lands for right of way, depot grounds, terminals, and other railway purposes, in or through any lands held by any Indian tribe or nation, person, individual,

or municipality in said Territory, or in or through any lands in said Territory which have been or may hereafter be allotted in severalty to any individual Indian or other person under any law or treaty, whether the same have or have not been conveyed to the allottee, with full power of alienation, is hereby granted to any railway company organized under the laws of the United States, or of any State or Territory, which shall comply with this Act.

SEC. 14. That the right of way of any railway company shall not exceed one hundred feet in width except where there are heavy cuts and fills, when one hundred feet additional may be taken on each side of said right of way; but lands additional and adjacent to said right of way may be taken and condemned by any railway company for station grounds, buildings, depots, side tracks, turnouts, or other railroad purposes not exceeding two hundred feet in width by a length of two thousand feet. That additional lands not exceeding forty acres at any one place may be taken by any railway company when necessary for yards, roundhouses, turntables, machine shops, water stations, and other railroad purposes. And when necessary for a good and sufficient water supply in the operation of any railroad, any such railway company shall have the right to take and condemn additional lands for reservoirs for water stations, and for such purpose shall have the right to impound surface water or build dams across any creek, draw, canyon, or stream, and shall have the right to connect the same by pipe line with the railroad and take the necessary grounds for such purposes; and any railway company shall have the right to

change or straighten its line, reduce its grades or curves, and locate new stations and to take the lands and right of way necessary therefor under the provisions of this Act.

SEC. 15. That before any railroad shall be constructed or any lands taken or condemned for any of the purposes set forth in the preceding section, full compensation for such right of way and all land taken and all damage done or to be done by the construction of the railroad, or the taking of any lands for railroad purposes, shall be made to the individual owner, occupant, or allottee of such lands, and to the tribe or nation through or in which the same is situated: *Provided*, That correct maps of the said line of railroad in sections of twenty-five miles each, and of any lands taken under this Act, shall be filed in the Department of the Interior, and shall also be filed with the United States Indian agent for Indian Territory, and with the principal chief or governor of any tribe or nation through which the lines of railroad may be located or in which said lines are situated.

In case of the failure of any railway company to make amicable settlement with any individual owner, occupant, allottee, tribe, or nation for any right of way or lands or improvements sought to be appropriated or condemned under this Act, all compensation and damages to be paid to the dissenting individual owner, occupant, allottee, tribe, or nation by reason of the appropriation and condemnation of said right of way, lands, or improvements shall be determined by the appraisement of three disinterested referees, to be appointed by the judge of the United States court, or other court of jurisdiction in

the district where such lands are situated, on application of the corporation or other person or party in interest. Such referees, before entering upon the duties of their appointment shall each take and subscribe, before competent authority, an oath that he will faithfully and impartially discharge the duties of his appointment, which oaths, duly certified, shall be returned with the award of the referees to the clerk of the court by which they were appointed. The referees shall also find in their report the names of the person and persons, tribe, or nation to whom the damages are payable and the interest of each person, tribe, or nation in the award of damages. Before such referees shall proceed with the assessment of damages for any right of way or other lands condemned under this Act, twenty days' notice of the time when the same shall be condemned shall be given to all persons interested, by publication in some newspaper in general circulation nearest said property in the district where said right of way or said lands are situated, or by ten days' personal notice to each person owning or having any interest in said lands or right of way: *Provided,* That such notice to any tribe or nation may be served on the principal chief or governor of the tribe. If the referees can not agree, then any two of them are authorized to and shall make the award. Any party to the proceedings who is dissatisfied with the award of the referees shall have the right, within ten days after the making of the award, to appeal, by original petition, to the United States court, or other court of competent jurisdiction, sitting at the place nearest and most convenient to the property sought to be taken, where the question of the damages occasioned by the taking of the lands in controversy shall be tried

de novo, and the judgment rendered by the court shall be final and conclusive, subject, however, to appeal as in other cases.

When the award of damages is filed with the clerk of the court by the referees, the railway company shall deposit the amount of such award with the clerk of the court, to abide the judgment thereof, and shall then have the right to enter upon and take possession of the property sought to be condemned: *Provided,* That when the said railway company is not satisfied with the award, it shall have the right, before commencing construction, to abandon any portion of said right of way and adopt a new location, subject, however, as to such new location, to all the provisions of this Act. Each of the referees shall receive for his compensation the sum of four dollars per day while actually engaged in the appraisement of the property and the hearing of any matter submitted to them under this Act. Witnesses shall receive the fees and mileage allowed by law to witness in courts of record within the districts where such lands are located. Costs, including compensation of the referees, shall be made part of the award or judgment and be paid by the railway company: *Provided,* That if any party or person other than the railway company shall appeal from any award, and the judgment of the court does not award such appealing party or person more than the referees awarded, all costs occasioned by such appeal shall be paid by such appealing party or person.

SEC. 16. That where a railroad is constructed under the provisions of this Act there shall be paid by the railway company to the Secretary of the Interior, for the benefit of the particular tribe or nation through

whose lands any such railroad may be constructed, an annual charge of fifteen dollars per mile for each mile of road constructed, the same to be paid so long as said lands shall be owned and occupied by such nation or tribe, which payment shall be in addition to the compensation otherwise provided herein; and the grants herein are made upon the condition that Congress hereby reserves the right to regulate the charges for freight and passengers on said railways and messages on all telegraph and telephone lines until a State government or governments shall exist in said Territory within the limits of which any railway shall be located; and then such State government or governments shall be authorized to fix and regulate the cost of transportation of persons and freights within their respective limits by such railways; but Congress expressly reserves the right to fix and regulate at all times the cost of such transportation by said railways whenever such transportation shall extend from one State into another, or shall extend into more than one State; and that the railway companies shall carry the mail at such prices as Congress may by law provide; and until such rate is fixed by law the Postmaster-General may fix the rate of compensation.

Sections 11 and 18 of the Act of April 26, 1906, 34 Stat. 137, 141, 144, provide:

SEC. 11. That all revenues of whatever character accruing to the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, whether before or after dissolution of the tribal governments, shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him;

and he shall cause to be paid all lawful claims against said tribes which may have been contracted after July first, nineteen hundred and two, or for which warrants have been regularly issued, such payments to be made from any funds in the United States Treasury belonging to said tribes. All such claims arising before dissolution of the tribal governments shall be presented to the Secretary of the Interior within six months after such dissolution, and he shall make all rules and regulations necessary to carry this provision into effect and shall pay all expenses incident to the investigation of the validity of such claims or indebtedness out of the tribal funds: *Provided*, That all taxes accruing under tribal laws or regulations of the Secretary of the Interior shall be abolished from and after December thirty-first, nineteen hundred and five, but this provision shall not prevent the collection after that date nor after dissolution of the tribal government of all such taxes due up to and including December thirty-first, nineteen hundred and five, and all such taxes levied and collected after the thirty-first day of December, nineteen hundred and five, shall be refunded.

* * * * * *

SEC. 18. That the Secretary of the Interior is hereby authorized to bring suit in the name of the United States, for the use of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, respectively, either before or after the dissolution of the tribal governments, for the collection of any moneys or recovery of any land claimed by any of said tribes, whether such claim shall arise prior to or after the dissolution of the tribal governments, and the United States courts in Indian Territory are hereby given

jurisdiction to try and determine all such suits, and the Secretary of the Interior is authorized to pay from the funds of the tribe interested any costs and necessary expenses incurred in maintaining and prosecuting such suits: *Provided,* That proceedings to which any of said tribes is a party pending before any court or tribunal at the date of dissolution of the tribal governments shall not be thereby abated or in anywise affected, but shall proceed to final disposition.

Where suit is now pending, or may hereafter be filed in any United States court in the Indian Territory, by or on behalf of any one or more of the Five Civilized Tribes to recover moneys claimed to be due and owing to such tribe, the party defendants to such suit shall have the right to set up and have adjudicated any claim it may have against such tribe; and any balance that may be found due by any tribe or tribes shall be paid by the Treasurer of the United States out of any funds of such tribe or tribes upon the filing of the decree of the court with him.

Section 1 of the Seminole jurisdictional Act of May 20, 1924, 43 Stat. 133, provides:

* * * That jurisdiction be, and is hereby, conferred upon the Court of Claims, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Seminole Indian Nation or Tribe, or arising under or growing out of any Act of Congress in relation to Indian Affairs, which said Seminole Nation or Tribe may have against the United States, which claims have not hereto-

fore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

Section 1 of the Creek jurisdictional Act of May 24, 1924, 43 Stat. 139, provides:

> * * * That jurisdiction be, and is hereby, conferred upon the Court of Claims, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Creek Indian Nation or Tribe, or arising under or growing out of any Act of Congress in relation to Indian affairs, which said Creek Nation or Tribe may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States: *Provided, however,* That the provisions of this Act shall not be construed to confer jurisdiction upon the court to hear, examine, consider, and adjudicate any balance claimed to be due on the so-called Loyal Creek claim, or any amount claimed to be due to equalize allotments among members of the Creek Tribe.

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